

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

OCT 11 2001

PATRICK FISHER
Clerk

JAMES MARION GUSTIN, SR.,

Petitioner-Appellant,

v.

RON WARD,

Respondent-Appellee.

Nos. 00-6291 & 00-6356
(D.C. No. CIV-97-668-C)
(W.D. Okla.)

ORDER AND JUDGMENT *

Before **HENRY , PORFILIO** , and **MURPHY** , Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of these appeals. *See* Fed. R. App. P. 34(a)(2); 10th Cir. Cir. R. 34.1(G). The cases are therefore ordered submitted without oral argument.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of (10th Cir. Cir. R. 36.3.

James Gustin, a state prisoner convicted of first-degree murder, seeks a certificate of appealability (COA) to appeal the district court's denial of his § 2254 habeas corpus petition. *See* 28 U.S.C. § 2253(c) (providing that no appeal may be taken from an order denying relief in a § 2254 petition unless the petitioner-appellant first obtains a COA by making "a substantial showing of the denial of a constitutional right").¹

Gustin alleges various constitutional violations arising from the determination that he was competent at the time he stood trial. This court has reviewed the request for a COA, Gustin's appellate brief, the magistrate judge's recommendation, the district court's order, and the entire record before us. Our review demonstrates that Gustin's § 2254 petition is not deserving of further proceedings, debatable among jurists of reason, or subject to different resolution on appeal. Gustin's request for a COA is denied. This consolidated appeal is accordingly DISMISSED.

Entered for the Court

John C. Porfilio
Circuit Judge

¹ Gustin separately appealed the district court's dismissal of his habeas petition as well as the later denial of his COA request. This court consolidated the appeals.